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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/869,941
Filing Date: January 04, 2002
Appellant(s): COLSON ET AL.

MAILED
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GROUP 1700

Ernest V. Linek
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 28, 2006 appealing from the Office action mailed May 18, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,591,434	HARTSTEIN	8-1967
4,910,064	SABEE	3-1990
5,294,258	JARRELL et al.	3-1994
3,753,842	PITTMAN	8-1973

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

I. Claims 158 – 161, 164 – 166, 169, 170, 172 – 176, 178, 179, 186 – 188, and 192 – 199 are rejected under 35 U.S.C. 102(b) as being anticipated by Sabee (4,910,064).

Sabee discloses a nonwoven web comprising a number of substantially parallel continuous filaments that are stabilized by meltblown fibers (abstract). The meltblown fibers are deposited on one side of the continuous filaments and two or more parallel webs may be cross laid and laminated to each other (abstract). The meltblown fibers lock the parallel filaments in a parallel, linearly oriented laydown pattern (column 5, lines 30 – 35).

Sabee describes that the melt blown layer can have a basis weight as low as about 3 to 5% by weight of the final web (column 5, lines 62 – 68). The webs can be produced with melt blown layers having a basis weight as low as 1 to 3 gsm (column 23, lines25 – 28). Also, the fibers of the meltblown web have a fiber diameter of about 0.5 to 10 microns (column 15, lines 10 – 12). Sabee also discloses that various materials can be used as the adhesive meltblown layer including various thermoplastic polymers, such as polyesters, polyolefins, and polyvinyls or mixtures and copolymers thereof (column 7, lines 25 – 35). Further, the adhesive material can be made from a hot melt adhesive, pressure sensitive adhesive, or a visco-elastic hot melt adhesive (column 7, lines 35 – 45).

The continuous parallel filaments can be made from various materials, natural or manmade, ranging from textile yarns of cotton, rayon, hemp, or multifilament yarns of rayon or nylon (column 7, lines 53 – 65). Also thermoplastic polymers, such as polyamides, polyolefins, or polyesters can be used to produce continuous filaments, as well as other filament forming materials such as carbon fibers (column 8, lines 1 – 20). The webs of substantially parallel fibers can be combines together to produce crosslaid webs wherein the parallel yarns are at an angle of

0 to 90° to each other (column 8, lines 20 – 35). The continuous filaments of a layer can be same or different from the continuous filaments of another layer or the continuous filaments in a single layer may be different from one another (column 8, lines 40 – 45). The filaments spacing can vary from wide spaces between the filaments to webs where the filaments are so dense they touch one another (column 10, lines 38 – 41).

The crosslaid web is produced by bonding the individual layers together, however the continuous filaments are not bonded at their cross-over points, but rather the meltblown fibers bond to the continuous filaments along the entire length of the filaments and then bond to other random locations on adjacent filaments in the same or adjacent layers (column 10, lines 42 – 55). Further, Sabee discloses that the webs of continuous filaments bonded together by the layer of meltblown webs can be bonded together with the melt blown layers of the crosslaid layers facing each other (column 19, lines 42 – 60). Thus, the bonded web would include two sets of parallel filaments at an angle of between 0 and 90° to each other. The layers are bonded together by randomly applied meltblown fibers which when assembled together form a discontinuous, random adhesive layer between the two sets of parallel filaments. The composite material can be made into finished products with basis weight of between 3 and 60gsm and heavier fabrics having a basis weight between 60 and 2000 gsm (column 11, lines 58 – 65). Thus, claims 158 – 161, 164 – 166, 169, 170, 172 – 176, 178, 179, 186 – 188, and 192 – 199 are anticipated by Sabee.

II. Claims 158 – 167, 169 – 189, and 192 – 199 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartstein in view of Jarrell et al. (5,294,258).

Hartstein discloses a nonwoven fabric comprising a first set of yarns laid parallel to one another, and a second set of parallel yarns cross-laid to the first set of yarns (abstract). The yarns

are bonded together by a thermoplastic film layer which is located between the two sets of yarns to form a bi-axial laminated nonwoven fabric (abstract). The yarns can be made from flexible materials such as rayon, synthetic fibers, cotton, or natural fibers, and the first set of yarns can be a different material from the second set of yarns (column 1, lines 50 – 54). The two sets of yarns are laid at an angle of approximately 90° to each other, with one set of yarns running in the warp direction and the other set of yarns running in the weft direction (column 4, lines 23 – 24). Thus, the yarns are set at an angle of about 89.7° to each other. The fabric may be used as blinds, carpet backing, reinforcement materials, placemats, or wall paper (column 4, lines 32 – 36).

Hartstein fails to teach using a discontinuous layer as the adhesive layer between the two sets of yarns. Jarrell et al. is drawn to a composite fabric produced by bonding together two fibrous webs with an adhesive layer (abstract). Jarrell et al. discloses that two woven or nonwoven layers are bonded together by a porous, adhesive matrix comprising a random fibrous adhesive pattern (abstract). Using a fibrous adhesive matrix to bond the web layers together provides a process for bonding together fabric layers without the loss of hand, flexibility, breathability or appearance (column 3, lines 30 – 35). The fibrous random adhesive matrix produces a large number of small bonding sites (column 3, lines 40 – 43). Further, Jarrell et al. discloses that the adhesive is adding in an amount sufficient enough to fully adhere the composite layers as well as have good flexibility and good hand (column 3, lines 50 – 60). The adhesive layers is applied in a light coating of about 0.075 to about 28 gsm (column 3, lines 60 – 65). Also, Jarrell et al. disclose that the adhesive material can produced using any suitable adhesive material including thermoplastic adhesives, reactive adhesives, high performance adhesives, and hot melt adhesives (column 5, lines 18 – 40). Thus, it would have been obvious to one of ordinary skill in the art to substitute the adhesive layer taught by Jarrell et al. for the

adhesive film layer taught by Hartstein to produce a finished product which is breathable and flexible and has good hand. Thus, claims 158 – 160, 164 – 166, 169, 170, 172, 173, 175, 178 – 180, 186 – 188, and 192 – 194 are rejected.

Further, while Jarrell et al. doesn't teach the thickness of the adhesive layer or the amount of adhesive based on the weight of the first layer or both layers bonded to the adhesive, Jarrell et al. discloses that a low add-on weight coating of adhesive material is preferred to maintain the flexibility of the textile layers and permeability of the composite material. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the adhesive amount and adhesive thickness, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). One of ordinary skill would be motivated to choose an thin, low add-on amount of adhesive which provides the laminate with sufficient bond strength and dimensional stability, without adding too much adhesive so that the adhesive makes the fabric too stiff and inflexible for in uses where flexibility is required. Therefore, claims 161, 171, 176, and 177 are rejected.

Additionally, Jarrell et al. discloses that any known type of thermoplastic hot melt adhesive material can be used as the adhesive layer. Thus, it would have been obvious to one having ordinary skill in the art to choose the claimed adhesive materials to use as the adhesive layer between the two sets of yarns, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. One of ordinary skill in the art would be motivated to choose materials which can easily be placed between the two sets of yarns, so that the adhesive material will produce a strong bond between the two yarns without using too much adhesive material that

the laminate becomes too stiff or heavy and loses the feel of a textile material. Thus, claim 174 is rejected.

Further, while Hartstein discloses that the yarns are spaced in accordance to the desired fabric density (column 2, lines 49 – 50), Hartstein fails to teach the range of fabric density for the warp and weft yarns. Hartstein discloses that the fabric can be used for various end products which would require different levels of coverage as well as having different strength and reinforcement requirements.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose a warp and weft density between 40 and 100 yarns/inch, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art, as set forth above. One of ordinary skill in the art would choose the claimed warp and weft density to produce a reinforcement fabric with high strength properties and stability properties in both the warp and weft direction. Also, one of ordinary skill in the art would choose a high warp and weft density to produce a fabric with a high cover factor to make the fabric less see through when used in applications such as wall paper or blinds. Therefore, claims 181 – 183 are rejected.

Also, it would have been obvious to one of ordinary skill in the art to optimize the weight of the first yarns to produce a fabric with good strength properties that is lightweight and can be used in various end use applications. Therefore, claims 162 and 163 are rejected.

While Hartstein discloses that various fiber materials can be used in the nonwoven fabric, including inorganic fibers, synthetic fibers, and natural fibers, Hartstein fails to teach using metal fibers. However, it would have been obvious to one having ordinary skill in the art to choose various types of metal fibers, since it has been held to be within the general skill of a worker in

the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. One of ordinary skill in the art would be motivated to choose metal fibers as a reinforcement material with good resistance properties and strength properties. Therefore, claims 167 and 189 are rejected.

Finally, Hartstein discloses that the fabric can be used for various end products which would require different levels of coverage as well as having different strength and reinforcement requirements. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the claimed denier or yarn size, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). One of ordinary skill in the art would optimize the yarn size to produce a reinforcement fabric with good strength properties and stability properties in both the warp and weft direction based on the desired use of the laminated material. Therefore, claims 184, 185, and 195 – 199 are rejected.

III. Claims 162, 163, 167, 168, 177, 180 – 185, and 189 – 191 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sabee.

The features of Sabee have been set forth above. Sabee discloses that the weight of the fabric can range from 3 to 2000 gsm and the adhesive can be as low as 3 to 5% of the weight of the finished fabric and as low as 1 to 3 gsm. However, Sabee fails to teach using a first layer having a basis weight of 50 gsm with an adhesive layer of 2 to 15 gsm or 5 to 10 gsm. However, based on the teaching of Sabee it would have been obvious to one of ordinary skill in the art to optimize the weight of the first yarns to produce a fabric with good strength properties that is

lightweight and can be used in various end use applications. Therefore, claims 162 and 163 are rejected.

Further, based on the amounts of adhesive applied and the thickness of the meltblown fibers, having diameters of 0.5 to 10 microns, set forth above, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the adhesive amount and adhesive thickness, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). One of ordinary skill would be motivated to choose an thin, low add-on amount of adhesive which provides the laminate with sufficient bond strength and dimensional stability, without adding too much adhesive so that the adhesive makes the fabric too stiff and inflexible for in uses where flexibility is required. Therefore, claims 171 and 177 are rejected.

While Sabee discloses that various fiber materials can be used in the nonwoven fabric, including inorganic fibers, synthetic fibers, and natural fibers, Sabee fails to teach using metal fibers. However, it would have been obvious to one having ordinary skill in the art to choose various types of metal fibers, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. One of ordinary skill in the art would be motivated to choose metal fibers as a reinforcement material with good resistance properties and strength properties. Therefore, claims 167 and 189 are rejected.

Additionally, Sabee discloses that various spacing can be used to produce the parallel filament yarns, however, Sabee fails to specific yarn densities for the parallel filaments. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was

made to choose a warp and weft density between 40 and 100 yarns/inch, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art, as set forth above. One of ordinary skill in the art would choose the claimed warp and weft density to produce a reinforcement fabric with high strength properties and stability properties in both the warp and weft direction. Also, one of ordinary skill in the art would choose a high warp and weft density to produce a fabric with a high cover factor to make the fabric less see through when used in applications such as wall paper or blinds. Therefore, claims 180 – 183 are rejected.

Finally, Sabee also discloses that the fabric can be used for various end products which would require different levels of coverage as well as having different strength and reinforcement requirements. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the claimed denier or yarn size, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). One of ordinary skill in the art would optimize the yarn size to produce a reinforcement fabric with good strength properties and stability properties in both the warp and weft direction based on the desired use of the laminated material. Therefore, claims 184, and 185 are rejected.

IV. Claims 168, 190, and 191 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartstein and Jarrell et al., as applied to claims 164 and 186 above, and in further view of Pittman (3,753,842).

V. Claims 168, 190, and 191 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sabee as applied to claims 164 and 186 above, and in further view of Pittman.

The features of both Hartstein and Sabee have been set forth above. While Hartstein discloses that synthetic fibers can be used in the warp and weft yarns, Hartstein fails to teach what types of synthetic fibers can be used. Further, Sabee discloses that various materials can be used to make the parallel yarns including thermoplastic filaments and natural fibers. Pittman is drawn to bi-axial laminated nonwoven fabrics. Pittman discloses that synthetic fibers such as rayon, nylon, polyester, and glass can be used to produce the nonwoven fabric (column 2, lines 41 – 53). Therefore, it would have been obvious to one of ordinary skill in the art to use the types of synthetic fibers taught by Pittman in the nonwoven fabric taught by Hartstein or Sabee, since Hartstein or Sabee suggests that various fiber materials can be used to produce the nonwoven fabrics. Further, the nylon, polyester, and glass fibers, would give the final product different strength, flexibility and stability properties than natural fibers. Therefore, claims 168, 190, and 191 are rejected.

(10) Response to Argument

It is noted that the applicant argues that the claims do not stand or fall together and a provides an argument for each claim separately for each rejection. However, while the Applicant does provide separate sections for each claim, each section merely repeats the argument for addressing why the prior art does not teach the limitations of claim 158. The applicant does not provide a different argument for each dependent claim. Therefore, to simplify matters, the arguments for each rejection has been grouped together.

I. The applicant argues that Sabee does not anticipate the claimed invention because Sabee does not teach that the adhesive layer is located substantially only between the first and second layers of substantially perpendicular yarns (Brief, pages 20 – 24). Instead, the applicant argues that Sabee teaches that the adhesive is added to both sides of the parallel sets of yarns and cites

various portions of the reference which discuss adding adhesive layers to more than one side of the parallel yarns.

While Sabee does disclose adding multiple adhesive layers to the composite fabric, as shown in the figures and section highlighted by the applicant, Sabee also discloses using a single adhesive layer. Sabee discloses that the adhesive meltblown fibers can be deposited on one or both sides of the continuous filaments, with two or more cross laid webs laminated together (abstract). Specifically, Sabee discloses that a layer of parallel continuous filaments are stabilized by depositing small diameter melt blown fibers onto one or both sides of the filament array (column 10, lines 43 – 50). The meltblown fibers would produce random, discontinuous bridges of adhesive between the parallel filaments. The web is then be furthered process by cross lapping or cross laying webs of continuous filaments onto the adhesive bonded filament array (column 10, lines 58 – 62). Thus, Sabee provides sufficient teaching for one having ordinary skill in the art to limit the adhesive to a single side of the filament array, and more particularly, to a single adhesive layer between two cross-plied continuous filament arrays.

Additionally, the composite material disclosed by Sabee is made by a similar method as the applicant's product. That is, the continuous filaments have a layer of meltblown fibers deposited on one side of the continuous filaments and then an additional layer of continuous filaments are crosslaid onto the adhesive layer, producing a composite with two sets of continuous filaments running perpendicular to each other and an adhesive layer substantially only between the two layers. Therefore, Sabee discloses the features of the claimed product.

Further, it is noted that the claim recites "comprising" language, allowing additional layers or components to be added to the claimed composite. Thus, the additional adhesive layers that Sabee discloses are added to the other side of the continuous filament layers are not

excluded by the open claim language. Also, the claim only requires that the adhesive layer is "substantially only between" the two sets of continuous filaments. Thus, the claim does not exclude some of the adhesive fibers from crossing over to the other side of the filament layer. Therefore, the additional adhesive layers and the adhesive fibers from the middle layer which intermingle with the additional adhesive layers are not excluded by the present claim. Further, the applicant arguments with regards to Sabee are not commensurate in scope with the current claims. Hence, the rejection is maintained.

II. With respect to the rejection based on Hartstein and Jarrell, the applicant argues that Hartstein fails to teach bonding the two sets of parallel yarns with a discontinuous adhesive layer comprising random bridges which connect the adjacent parallel yarns (Brief, pages 35 and 36). This deficiency is acknowledged in the rejection and is the reason the reference is combined with Jarrell. Further, the applicant argues that Jarrell fails to teach bonding together layers of parallel sets of yarns (Brief, pages 36 – 38). While Jarrell focuses on bonding together woven or nonwoven fabrics, Jarrell does not exclude the use of the parallel filaments to create a nonwoven fabric. Further, Jarrell is relied on to teach using a preformed, discontinuous adhesive layer between to fabric layers to form a composite material. Hartstein discloses creating a composite fabric by bonding together sets or parallel filaments. The discontinuous adhesive fibers form bridges that connect the parallel filaments to the adjacent filaments. Thus, it is the combination of the two references which is relied on to teach the claimed product and not the references individually.

Additionally, the applicant argues that the proposed combination is not logical because Hartstein teaches using a self-supporting discrete film layer to bond the sets of parallel filaments together and Jarrell, in contrast, teaches the adhesive is applied in a web pattern for uniformly

coating the contact area (Brief, pages 38 – 39). The applicant further argues that there is no motivation to combine the two references and no guarantee of success. However, Jarrell discloses that the discontinuous adhesive layer can be combined with various textile webs and materials to create breathable composite fabrics. Further, the adhesive is applied to a fabric layer on a belt and then an additional layer is applied to the adhesive layer. There is no reason disclosed by Hartstein or Jarrell that suggests that this method would not work with sheets of parallel filaments as opposed to webs or nonwoven fabrics. Further, Jarrell discloses that the fabric layers can include materials such as scrims or net-like material with very large openings, which would not have high dimensional stability (column 6, lines 35 – 38). Thus, the process does not require a highly stable or dense fabric to create the finished composite material. Further, the improved properties with regards to the breathability of the composite fabric and lower weight and decease of materials costs due to using less adhesive material in the discontinuous adhesive layer would provide sufficient motivation for one of ordinary skill in the art to modify the Hartstein composite with a discontinuous adhesive layer between the two sets of parallel yarns. Therefore, the rejection is maintained.

III. With regards to the 35 USC 103 rejections to claims 162, 163, 167, 168, 177, 180 – 185, and 189 – 191 based on Sabee, the applicant argues that Sabee fails to teach that the adhesive is substantially only between the first and second layers of parallel yarn sets (Brief, pages 54 – 58). As discussed above, Sabee, when read as a whole, does teach that the adhesive can be only one side of the continuous filaments. Thus, Sabee does disclose that composite fabric can have a single adhesive layer and that the adhesive layer is substantially only between the two parallel continuous filament arrays. Further, the applicant's arguments are not commensurate in scope with the current claim because the claim does not exclude additionally adhesive layers from

being added to the opposite sides of the continuous filament yarns. The claim recites open language which allows additional adhesive or fabric layers to be added to composite structure. Also, the term "substantially only between" means that some of the fibers can extend beyond the one surface of the continuous filaments and even intermingle with additional fibers or filaments in additional layers. Hence, the composite disclosed by Sabee meets the claimed limitations. Thus, the rejections is maintained.

IV. With regards to the 35 USC 103 rejection to claims 168, 190, and 191 based on Hartstein, Jarrell, and Pittman, the applicant argues that the references do not teach random, discontinuous bridges of adhesive (Brief, pages 64 – 68). However, as discussed above, Jarrell discloses applying adhesive fibers in a discontinuous random manner, which would produce the claimed bridges of adhesive connecting parallel filaments. The combination of Hartstein and Jarrell, produces the claimed product. Pittman is relied on only to teach using different types of yarn materials that can be used in composite material comprising parallel yarn arrays. Thus, the manner in which Pittman adds the adhesive is irrelevant to the present rejection since Jarrell is relied on to teach the discontinuous adhesive layer. Therefore, the rejection is maintained.

V. Finally, the applicant argues that the 35 USC 103 rejection to claims 168, 190, and 191 over Sabee and Pittman fails to teach random, discontinuous bridges of adhesive between the parallel filaments (Brief, pages 70 – 72). It is noted that in the heading the applicant refers to the rejection over US 3,582,443 and US 3,753,842. However, this is a typo by the applicant. The rejection is over Sabee (4,910,064) in view of Pittman (3,753,842). The features of Sabee have been addressed above. Sabee discloses a composite comprising arrays of parallel, continuous filaments bonded together by random, discontinuous meltblown fibers. As shown in the figures the meltblown fibers connect together adjacent parallel yarns. Therefore, these features are

taught by Sabee and do not need to be taught by Pittman. Pittman is relied on only to teach using different types of yarn materials that can be used in composite material comprising parallel yarn arrays. Thus, the applicant's arguments that Pittman does not teach the discontinuous random bridges of adhesive is irrelevant to the rejection because these features are taught by Sabee. Therefore, the rejection is maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jenna-Leigh Befumo

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PRIMARY EXAMINER

Conferees:

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